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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 252

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

OPINIONS BELOW

The original opinion of the Board of Tax Appeals (R. 11–21) is reported at 44 B. T. A. 978; its subsequent opinion on rehearing (R. 25–27) is not officially reported. The opinion of the Circuit Court of Appeals (R. 183–191) is not yet officially reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 30, 1942 (R. 191). The petition for a writ of certiorari was filed July 24,

1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, for purposes of income taxation, the petitioner during the years 1935 and 1936 was a "life insurance company" as defined by Section 201 (a) of the Revenue Acts of 1934 and 1936, and entitled to be taxed as such.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, pp. 10–14.

STATEMENT

The facts, as found by the Board of Tax Appeals (R. 12–15, 25–27), may be stated as follows:

The petitioner, a Missouri corporation, was organized in 1926 and thereafter was engaged, under the provisions of Article 3 of chapter 37 of the Revised Statutes of Missouri, 1929, in the business of issuing life, health, and accident insurance on the "assessment plan." In 1932 it was reincorporated and authorized to issue such insurance on the "stipulated premium plan" under Article 4 of that chapter of the Missouri statutes. (R. 12).

The petitioner's amended articles of incorporation (Ex. 5, R. 59–69) provided, among other things, that irrespective of the absence of any

statutory requirement for reserves on accident and health business, a reserve be established on health and accident policies of not less than 15% of the total premiums in force on such policies, in addition to a reserve on life policies as required by statute (R. 12–13).

During the taxable years 1935 and 1936, all of the petitioner's business was transacted in Missouri. It issued life policies and health and accident policies. The latter were cancellable either by petitioner or by the insured (R. 13).

As required by Missouri statute, the petitioner set aside a reserve on its life policies calculated on the American Experience Table at 3½%, which reserve amounted to $8,337.49, $10,037.89, and $11,841.29 on December 31 of 1934, 1935, and 1936, respectively (R. 13, 39–40; Ex. 7, R. 91–103; Ex. 9, R. 125–137; Ex. 11, R. 159–171).

On October 4, 1935, the petitioner entered into an agreement with the Superintendent of Insurance of the State of Missouri (Ex. 12, R. 173–177), in which it was recited that an examiners' report disclosed impairment of the petitioner due to its computation of unearned premium reserves on the method prescribed in its articles of incorporation, which method was at variance with the formula generally accepted and used by other insurance companies doing a like business, and that the Superintendent of Insurance desired that petitioner maintain unearned premium reserves

equivalent to those of other companies doing a like business in the state, which petitioner, wishing to operate in the state, was likewise desirous of doing. In that agreement, the petitioner agreed to increase its unearned premium reserve on its health and accident or health or accident business to 20% of the gross premiums in force on December 31, 1935, and thereafter to increase it by 5% each year, so that it would amount to 50% of the gross premiums in force by the end of 1941. (R. 13–14, 27.)

In its annual report to the Superintendent of Insurance for 1934 (Ex. 6, R. 71–89), the petitioner listed among its liabilities (at line 25A, R. 81) a "Special Reserve" of $74,459.53, explaining it as the reserve, amounting to 15% of premiums in force on accident and health policies, maintained in accordance with its amended articles of incorporation. In its annual reports for 1935 (Ex. 8, R. 105–123) and 1936 (Ex. 10, R. 139–157), the petitioner listed among its liabilities (at line 25A, R. 115, 149) the respective amounts of $98,622.87 and $121,114.45, describing each as "Special Reserve in accordance with agreement entered into Oct. 14, 1935 [October 4, 1935], with Mo. Ins. Dept." (R. 15). This unearned premium reserve of the petitioner was not based upon a table of contingency or experience, did not take into consideration earnings or interest on the fund, was not used to pay contingent claims when the contingency insured against occurred,

and was not required by any express statutory provisions of the State of Missouri or rules and regulations of the state Insurance Department promulgated in the exercise of a power conferred by statute. (R. 26–27.)

The petitioner's premium income from health and accident business was $590,802.68, $636,474.03 and $658,842.02 in 1934, 1935, and 1936, respectively. Its premium income from life business for those years was $11,738.40, $11,647.15 and $12,911.80, respectively. (R. 15.)

The petitioner reported its income and computed its tax under the provisions of the revenue law relating to life insurance companies. The Commissioner, however, determined that the petitioner was taxable as an insurance company other than life or mutual, and accordingly asserted tax deficiences for 1935 and 1936. (R. 6–9.) The Board sustained the Commissioner (R. 11–21, 25–27), and the court below affirmed (R. 183–191).

ARGUMENT

The decision below to the effect that the petitioner was not a "life insurance company" within the meaning of Section 201 (a) of the Revenue Acts of 1934 and 1936 is correct, and presents neither a conflict nor a question of general importance.

Under the revenue acts, life insurance companies have long enjoyed favored treatment (cf. *Helvering* v. *Oregon Ins. Co.*, 311 U. S. 267, 268–269); and in order to make sure that such

favored treatment would be accorded only to companies whose business was primarily life insurance, Section 201 (a) defines a life insurance company as one engaged in the business of issuing life insurance and annuity contracts, "the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds." In the case of this petitioner, the reserves for life insurance were approximately between $8,000 and $12,000 in each of the three years involved, whereas its reserves with respect to its other insurance business ranged from about $74,000 to $121,000 in those years. It is thus apparent that life insurance was only a minor part of petitioner's business and that it failed to qualify as a life insurance company under Section 201 (a).[1] The reserve funds held for the fulfillment of its life insurance contracts comprised far less than 50 percent of its "total reserve funds."

Petitioner, however, contends that the reserves for its nonlife insurance business were merely set up in pursuance of an arrangement with the State

[1] The result here is strikingly confirmed by the fact that the annual premiums received by petitioner from its life insurance business did not exceed $13,000 in any one of the three years involved, whereas its premium income from nonlife insurance was nearly $600,000 in one of the years and in excess of $600,000 in the other two years. (R. 15.) Thus, measured by its premiums, its life insurance business constituted only about 2 percent of its total business.

Superintendent of Insurance and do not represent technical insurance "reserves required by law." Accordingly, it urges that those reserves must be excluded from its "total reserve funds" under Section 201 (a), and that upon such exclusion, there is left only its life-insurance reserve, with the consequence that the life-insurance reserve thereby comprises 100 percent of its "total reserve funds." The pivotal error in petitioner's position is that it seeks to qualify the term "total reserve funds" with the requirement that such reserves be "required by law." No such limitation appears in Section 201 (a).[2] It is true that in allowing a deduction in Section 203 (a) (2) of a fixed percentage of a company's reserves, Congress has carefully restricted the deduction so that it may be computed only upon the basis of reserves "required by law." But the deduction granted by Section 203 comes into play only after it has already been determined that the taxpayer is a "life insurance company" under Section 201 (a). And

[2] Moreover, the nonlife insurance reserves here involved were established pursuant to an agreement with the Missouri Superintendent of Insurance who deemed them essential to the proper conduct of its business and the protection of its policy holders. See Sections 5670, 5671, 5680, 5684, 5762, and 5778 of the Revised Statutes of Missouri. (Appendix, *infra*. See also *State ex rel.* v. *Hyde*, 315 Mo. 681, 690; *State ex rel.* v. *Revelle*, 257 Mo. 529, 535; *Aetna Ins. Co.* v. *Hyde*, 34 F. (2d) 185, 198–199 (W. D. Mo.); *State ex rel.* v. *Gehner*, 320 Mo. 691.

the term "total reserve funds" in Section 201 (a) embraces all types of insurance reserves, whether or not required by law.[3]

Most of the decisions relied upon by petitioner deal, not with Section 201, but with the provisions of Section 203 or like provisions in earlier revenue acts and are concerned with the amount of the deduction allowable. None of the cases cited holds that the phrase "total reserve funds" in Section 201 (a) is limited by the term "required by law" in Section 203 (a) (2). The decision below is therefore not in conflict with any of the cases relied upon by petitioner.

CONCLUSION

The court below correctly interpreted the statute and applied it to the facts of the case. There is no conflict of decisions, and no question of general importance calling for a review by this Court is

[3] A life insurance company may take a deduction under Section 203, measured by its reserves "required by law." The purpose of Section 201 (a), however, was to single out for such special treatment only those companies more than 50 percent of whose reserves could qualify for the deduction under Section 203 (a). Accordingly, the Treasury Regulations properly construe Section 201 (a) as referring only to those life insurance reserves falling within Section 203 (see Regulations 86, Art. 201(a)-1); but in order to determine whether the taxpayer can qualify under Section 201 (a), those life insurance reserves must be more than 50 percent of its "total reserve funds," whether or not the latter are comprehended within Section 203.

presented. The petition should, therefore, be denied.

Respectfully submitted.

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